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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,474	10/21/2003	Kenneth A. Vlazny	3127-6059US	3841
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EXAMINER ANDERSON, JOHN A				
ART UNIT 3694		PAPER NUMBER		
NOTIFICATION DATE 03/17/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Office Action Summary

Application No.

10/690,474

Applicant(s)

VLAZNY ET AL.

Examiner

JOHN A. ANDERSON

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

1. In the amendment filed 11/19/2009, the following has occurred: Claims 220 and 25 are amended. Claims 1-26 are pending and are presented for examination.

Information Disclosure Statement

2. The information disclosure statement dated 12/26/2007 and 05/04/2009 have been considered.

Claim Rejections - 35 USC § 101

- . 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-26 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions, §101 process must (1) be tied to another statutory class (such as a particular machine) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (the Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)).

If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. §101.

In this particular case, regarding the first test, in performing the steps of the claimed subject matter, there is no requirement that a machine be used, thus the claims are not considered sufficiently tied to another statutory class. Regarding the second test, since the claimed subject matter may be performed using only human intelligence, the steps do not sufficiently transform the underlying subject matter to be statutory. Thus, to qualify as a 101 statutory method, the claim should positively recite the other statutory class (the thing or product) to which it is tied and sufficiently transform the underlying subject matter. Appropriate correction is required

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bridgeman J L et al (US Patent 6634946) and in view of Weingardt Get al (US. Patent 5275400).
6. As regards claim 1, Bridgeman J L discloses a method of playing a pari-mutuel wagering game, comprising:
 - identifying a plurality of potential outcomes for an event; column 7 lines 39-42
 - recording an amount of each game participant's wager and the specified odds level accepted for each wager; [Fig 1]

- identifying at least one of the plurality of potential outcomes as a winning outcome for the event; [column 7 lines 39-42]
- identifying all game participants of the plurality of game participants that placed a wager on the winning outcome as winning game participants; and [column 43 lines 50-52]
- distributing, from the pari-mutuel wagering pool, an appropriate payout to each winning game participant.[column 43 lines 50-52]

Bridgeman J L does not disclose

- affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted;
- forming a pari-mutuel wagering pool having funds comprised of all wagers placed;

Weingardt G discloses

- affording a plurality of game participants an opportunity to place a wager on one or more of the plurality of potential outcomes and to specify an odds level of a plurality of progressive odds levels at which the wager is accepted; [Fig 5]
- forming a pari-mutuel wagering pool having funds comprised of all wagers placed; [column 4 lines 33-44]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The

motivation would have been to develop a fund source to meet the payouts requirements.

7. As regards claim 2, Bridgeman J L does not disclose wherein distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager. Weingardt G discloses distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager. [column 2 lines 5-10]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to meet minimum requirements of player participants.

8. As regards claim 3, Bridgeman J L does not disclose further comprising determining whether the funds in the pari-mutuel wagering pool are sufficient to return to each winning game participant the amount of that game participant's wager and to pay odds on each winning game participant's wager at the specified odds level accepted for each wager.

Weingardt G discloses whether the funds in the pari-mutuel wagering pool are sufficient to return to each winning game participant the amount of that game participant's wager and to pay odds on each winning game participant's wager at

the specified odds level accepted for each wager. [column 2 lines 24-30; column 8 lines 55-60]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to determine whether it would be profitable to proceed with the game.

9. As regards claim 4, Bridgeman J L does not disclose wherein if it is determined that the funds in the pari-mutuel wagering pool are sufficient, distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.

Weingardt G discloses wherein if it is determined that the funds in the pari-mutuel wagering pool are sufficient, distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager. [column 7 lines 36-49]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The

motivation would have been to determine whether it would be profitable to proceed with the game.

10. As regards claim 5, Bridgeman J L does not disclose wherein if it is determined that the funds in the pari-mutuel wagering pool are not sufficient, the method further comprises determining the cumulative amounts necessary to pay odds on each wager placed by a winning game participant at each odds level of the plurality of progressive odds levels and to pay odds on each wager placed by a winning game participant at an odds levels below each odds level of the plurality of progressive odds levels.

Weingardt G discloses, wherein if it is determined that the funds in the pari-mutuel wagering pool are not sufficient, the method further comprises determining the cumulative amounts necessary to pay odds on each wager placed by a winning game participant at each odds level of the plurality of progressive odds levels and to pay odds on each wager placed by a winning game participant at an odds levels below each odds level of the plurality of progressive odds levels. [column14 lines 13-18

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to adjust the potential payouts before the game begins.

11. As regards claim 6, Bridgeman J L discloses further comprising determining a max odds payout at a particular odds level at which the funds in the pari-mutuel wagering pool are sufficient to pay odds on all wagers placed by the winning game participants at the particular odds level and to pay odds on all wagers placed by the winning game participants at odds levels of the plurality of progressive odds levels that are below the particular odds level. [column 54 lines 32-37]
12. As regards claim 7, Bridgeman J L discloses wherein distributing an appropriate payout to each winning game participant comprises returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout. [column 12 lines 18-26]
13. As regards claim 8, Bridgeman J L does not disclose further comprising determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.
Weingardt G discloses further comprising determining

whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each winning game participant's wager at the specified odds level accepted for that wager.[column 5 lines 34-48]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to make sure that the operating costs are covered.

14. As regards claim 9, Bridgeman J L does not disclose wherein if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to all the winning game participants, which share is proportional to each winning game participant's wager.
- Weingardt G discloses wherein if there a surplus of the funds in the pari-mutuel is wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to all the winning game participants, which share is proportional to each winning game participant's wager.[column 3 lines 48-67]
- It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to cover the operating costs.

15. As regards claim 10, Bridgeman J L discloses further comprising determining whether there is surplus of the funds in the pari-mutuel wagering pool subsequent to returning to each winning game participant the amount of that game participant's wager and paying odds on each wager placed by a winning game participant at the max odds payout or at an odds level below the max odds payout. [column 12 lines 18-26]

16. As regards claim 11, Bridgeman J L does not disclose wherein if there is a surplus of the funds in the pari-mutuel wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to at least a subset of the winning game participants, which share is proportional to each winning game participant' s wager. Weingardt G discloses wherein if there a surplus of the funds in the pari-mutuel is wagering pool, distributing an appropriate payout to each winning game participant further comprises distributing a share of the surplus of the funds to at least a subset of the winning game participants, which share is proportional to each winning game participant's wager. [column 3 lines 48-67]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to provide equitable distribution to the winner's base on extent of risk taken.

17. As regards claim 12, Bridgeman J L discloses wherein distributing a share of the surplus of the funds to at least a subset of tile winning game participants comprises distributing a share of the surplus to all the winning game participants. [column 46 lines 18-20]
18. As regards claim 13, Bridgeman J L discloses wherein distributing a share of the surplus of the funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all the winning game participants that placed a wager at the max odds payout. [column 46 lines 18-20]
19. As regards claim 14, Bridgeman J L does not disclose wherein distributing a share of the surplus of funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all winning game participants that placed a wager at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout.
Weingardt G discloses wherein distributing a share of the surplus of funds to at least a subset of the winning game participants comprises distributing a share of the surplus to all winning game participants that placed a wager at the max odds payout or at an odds level of the plurality of progressive odds levels that is below the max odds payout. [column 14 lines 13-18]
It would have been obvious for a person of ordinary skill in the art at the time of

the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to encourage participation in the game.

20. As regards claim 15, Bridgeman J L does not disclose further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant.

Weingardt G discloses further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant.[column 3 lines 48 -67]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to cover the operating costs.

21. As regards claim 16, Bridgeman J L does not disclose further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant. Weingardt G discloses further comprising subtracting a takeout share from the pari-mutuel wagering pool prior to distributing an appropriate payout to each winning game participant.. [column 3 lines 48 -67]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The

motivation would have been to cover the operating costs.

22. As regards claim 17, Bridgeman J L discloses receiving an appropriate payout.
[column 43 lines 50-52]

Bridgeman J L does not disclose a method of playing a pari-mutuel wagering game, comprising: placing a wager on at least one outcome of a plurality of potential outcomes for an event, the wager being placed in a pari-mutuel wagering pool; specifying, at the time the wager is placed, odds at which the wager is accepted; and if the at least one outcome is a winning outcome, Weingardt G discloses A method of playing a pari-mutuel wagering game, comprising: placing a wager on at least one outcome of a plurality of potential outcomes for an event, the wager being placed in a pari-mutuel wagering pool; specifying, at the time the wager is placed, odds at which the wager is accepted; and if the at least one outcome is a winning outcome, [Fig 5]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to provide different levels of participation and appropriate payouts.

23. As regards claim 18, Bridgeman J L does not disclose wherein receiving an appropriate payout comprises: receiving a return of the wager; and if the pari-mutuel wagering pool contains sufficient funds, receiving odds on the wager at

the odds at which the wager was accepted.

Weingardt G discloses wherein receiving an appropriate payout comprises: receiving a return of the wager; and if the pari-mutuel wagering pool contains sufficient funds, receiving odds on the wager at the odds at which the wager was accepted. [column 2 lines 24 -30 and column 8 lines 55-60]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to determine whether it would be profitable to proceed with the game.

24. As regards claim 19, Bridgeman J L does not disclose wherein receiving an appropriate payout further comprises receiving a share of a surplus of funds from the pari-mutuel wagering pool, which share is proportional to the wager? Weingardt G discloses wherein receiving an appropriate payout further comprises receiving a share of a surplus of funds from the pari-mutuel wagering pool, which share is proportional to the wager, [column 3 lines 48-67]
- It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Weingardt G in the device of Bridgeman J L. The motivation would have been to provide equitable distribution to the winner's base on extent of risk taken.
25. Claims 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Speck D.P. (US. Patent 7302412) and further in view of Aronson TL et al (US. Patent 6695701).

26. As regards claim 20 Speck discloses a method of playing a pari-mutuel wagering game, comprising: identifying a plurality of potential outcomes for an event;
- setting an initial share price for shares corresponding to each of the plurality of potential outcomes before making the shares available for purchase;
[column 10 lines 63-04]
 - affording a plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes at the initial share price; [column 10 lines 63-04]
 - determining an adjusted share price for shares corresponding to each of the plurality of potential outcomes; [column 10 lines 63-04]
 - affording the plurality of game participants an opportunity to purchase at least one share in favor of at least one outcome of the plurality of potential outcomes at the adjusted share price; [column 10 lines 63-04]
 - identifying at least one winning outcome from the plurality of potential outcomes for the event; [column 2 lines 12-18]
 - distributing, from the pari-mutuel wagering pool, an appropriate payout to each game participant that purchased at least one share in favor of the at least one winning outcome. [column 12 lines 6-10]

Speck does not disclose forming a pari-mutuel wagering pool comprising funds received for each share purchased;

Aronson TL discloses forming a pari-mutuel wagering pool comprising funds received for each share purchased; [column 16 lines 58-05]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Aronson TL in the device of Speck. The motivation would have been to develop a fund source to meet the payouts requirements.

27. As regards claim 21 Speck discloses wherein distributing an appropriate payout to each game participant that purchased at least one share in favor of the at least one winning outcome comprises distributing to each game participant that purchased at least one share in favor of the at least one winning outcome funds equivalent to the share price at which each share in favor of the at least one winning outcome was purchased. [column 4 lines 34 -39]
28. As regards claim 22 Speck discloses further comprising: determining a total number of shares purchased in favor of the at least one winning outcome; and determining a total value of the funds comprising the pari-mutuel wagering pool. [column 4 lines 40 -58]

29. As regards claim 23 Speck discloses further comprising determining a dividend value for each share purchased in favor of the at least one winning outcome by dividing the total value of the funds comprising the pari-mutuel wagering pool by the total number of shares purchased in favor of the at least one winning outcome. [column 4 lines 40 -58]
30. As regards claim 24 Speck discloses wherein distributing an appropriate payout to each game participant that purchased at least one share in favor of the winning outcome comprises distributing to each game participant that purchased at least one share in favor of the winning outcome, funds equivalent to the share price at which each share in favor of the winning outcome was purchased and the dividend value for each such share purchased in favor of the winning outcome. [column 4 lines 34- 58]
31. As regards claim 25 Speck discloses a method of playing a pari-mutuel wagering game, comprising: purchasing at least one share in favor of a particular outcome of a plurality of potential outcomes for an event at a share price, the share price comprising one of an initial share price set prior to making the at least one share available for purchase and an adjusted share price set after the initial share price is set, and if the particular outcome in favor of which the at least one share was purchased is a winning outcome, receiving an appropriate payout. [column 10

lines 63-04; column 12 lines 6-10]

Speck does not disclose wherein funds for each share purchased being placed in a pari- mutuel wagering pool;

Aronson TL discloses wherein funds for each share purchased being placed in a pari- mutuel wagering pool; [column 16 lines 58-05]

It would have been obvious for a person of ordinary skill in the art at the time of the invention was made to use Aronson TL in the device of Speck. The motivation would have been to develop a fund source to meet the payouts requirements.

32. As regards claim 26 Speck discloses wherein receiving an appropriate payout comprises: receiving funds equivalent to the share price at which each share in favor of the winning outcome was purchased; and receiving a dividend for each share purchased in favor of the winning outcome.[column 4 lines 40 -58].

Response to Arguments

Applicant's arguments filed 11/19/2009 have been fully considered but they are not persuasive.

Examiner refutes the Applicant assertion " that forming a wagering pool inherently requires a transformation" constitutes physical transformation. Physical transformation pertains to the transforming of an article or physical object to a

different state or thing. The transformation of data is not physical transformation, nor are physical acts necessarily a physical transformation.

Applicant states that "wagering pool are not steps that can be performed using only human intelligence," however the claims do not indicate what apparatus or machine is being used to execute this invention. Therefore, the claims do not satisfy the *Bilski* 101 rejection requirements.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **JOHN A. ANDERSON** whose telephone number

is (571)270-3327. The examiner can normally be reached on Monday through Friday 8:00 to 5:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John A Anderson/
Examiner, Art Unit 3694

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/J. A. A./ Examiner, Art Unit 3694

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/James P Trammell/

Supervisory Patent Examiner, Art Unit 3694